U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

FILE: [redacted] Office: Miami (Tampa) Date: AUG 10 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732).

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The application was denied by the District Director, Miami, Florida, who certified his decision to the Associate Commissioner, Examinations, for review. The district director's decision will be affirmed.

The applicant is a native and citizen of Cuba who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act of November 2, 1966. This Act provides for the adjustment of status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least one year, to that of an alien lawfully admitted for permanent residence if the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence.

The district director determined that the applicant was ineligible for adjustment of status because he was amenable to deportation under section 237(a)(2)(B)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1227(a)(2)(B)(i). The district director, therefore, denied the application.

In response to the notice of certification, the applicant expresses remorse for his past behavior and claims he has neither smoked nor drank beer for years. He requests reconsideration because he has lived in the United States for nearly 20 years, he is married to a U.S. citizen and they own and manage a business, he has been a productive person, and he has not had any other problems with the law.

Section 212(a)(2) of the Act provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

> (A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of --
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802).

The record reflects the following:

1. On June 9, 1992, in Hillsborough County, Florida, Case No. 88-13664, the applicant entered a plea of guilty to [redacted] check, in violation of Florida Statute section 832.05(4). Adjudication of guilt was withheld and the applicant was required to pay court costs in the amount of $25.

2. On May 30, 1984, in the Circuit Court of the Thirteenth Judicial Circuit, Hillsborough County, Florida, Case No. [redacted] the applicant was indicted for Count 1, possession of cocaine, and Count 2, possession of cannabis. He was found guilty of both counts and he was placed on probation for a period of 3 years and assessed $125 in court costs as to Count 1, and he received a suspended sentence as to Count 2.

The director, after referring to the applicant's convictions, concluded that the applicant is amenable to deportation (removal) under section 237(a)(2)(B)(i) of the Act based on his convictions. The record, however, reflects that the applicant was paroled into the United States on May 25, 1980 pursuant to section 212(d)(5) of the Act, 8 U.S.C. 212(d)(5). It has been held in Matter of Torres, 19 I&N Dec. 371 (BIA 1986), that an alien paroled into the United States pursuant to section 212(d)(5) of the Act remains subject to exclusion proceedings (inadmissibility) pursuant to sections 235 and 236 of the Act. Section 212(d)(5) specifically states than an alien paroled into the United States pursuant to that section must be dealt with as any other applicant for admission upon termination of the parole. See also Matter of Badalamenti, 19 I&N Dec. 623 (BIA 1988); Matter of Ching and Chen, 19 I&N Dec. 203(BIA 1984).

Issuing worthless check (paragraph 1 above), under Florida Statute section 832.05, does not expressly require intent to defraud as an element of the crime; the statute speaks only of the "knowing" issuance of worthless checks. The Board, therefore, held in Matter of Zangwill, 18 I&N Dec. 22 (BIA 1981), that under Florida law, knowledge of insufficient funds is an element of the crime of issuing worthless checks, but intent to defraud is not an essential element of the crime, and that moral turpitude is not involved if a conviction can be obtained without prior proof that the convicted person acted with intent to defraud. The applicant is, therefore, not inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The applicant, however, is inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act based on his conviction of possession of controlled substances. There is no waiver available to an alien found inadmissible under this section except for a single offense of simple possession of thirty grams or

[redacted]

less of marijuana. The applicant does not qualify under this exception.

The applicant is ineligible for adjustment of status to permanent resident pursuant to section 1 of the Act of November 2, 1966. The decision of the district director to deny the application will be affirmed.

ORDER: The district director's decision is affirmed.